

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

BZA CASE #19581

**PARTY: COMMITTEE OF NEIGHBORS DIRECTLY
IMPACTED BY LAMB APPLICATION (CNDI-LA)**

**MOTION
TO REOPEN A CLOSED CASE**

**TAALIB-DIN A. UQDAH
OBO/CNDI-LA
1373 JEFFERSON STREET, NW
WASHINGTON, DC 20011
202-421-8945
TAUQDAH@AOL.COM**

2013 JUN 19 PM 1:57

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

BZA CASE #19581

Application of the Kingsbury Center, Building Hope Parkside Foundation, and Latin American
Montessori Bilingual PCS

MOTION TO REOPEN A CLOSED CASE

**STATEMENT OF THE COMMITTEE OF NEIGHBORS DIRECTLY
IMPACTED BY LAMB APPLICATION (CNDI-LA)**

WITH RESPECT TO BZA CASE #19581, this is the Motion of the **Committee of Neighbors Directly Impacted by LAMB Application (CNDI-LA)**, a Party to the BZA case listed and referenced above.

PLEASE TAKE NOTICE, that the undersigned will bring a motion asking the BZA Chairman Fred Hill to reopen the record in the above referenced matter, to correct certain inconsistencies, technicalities and violations in the official case record, in accordance with Title 11 – Zoning Subtitle Y – Board of Zoning Adjustment Rules of Practice and Procedure, as well as violations of the Open Meetings Act – DC Code §1-207.42.

POINTS AND AUTHORITIES

Pursuant to Title 11 – Zoning: Subtitle Y – Board of Zoning Adjustment Rules of Practice and Procedure: The Board has the authority under §408.1(f)(g):

(f) To adjourn a public hearing and establish the date when the public hearing will be continued; (g) Close the public hearing and record.

On the 20th of December, 2017, the Board did just that – adjourned the public hearing, set the date of January 17, 2018 for decision and closed the public record, except for specific documents and summations it requested and allowed the parties to submit.

Subsequently, the Board closed the December 20th proceedings, as follows:¹

¹ See 12/20/17 Transcript – BZA Case #19581 – Page: 129/Lines 21-23; Page 130/Lines 1-2)

CHAIRPERSON HILL: "Okay. Are we all clear? Okay, then, happy holidays and see you on the – well, or you can watch on TV. We're going to just . . . do a decision on the 17th. Okay, that's it."

Further, it permits as in §§103.5 thru 103.7

The proposed public agenda for each meeting shall be posted on the Office of Zoning website and available to the public at least four (4) days prior to each meeting. Copies of the agenda shall be available to the public at the meetings or hearings. Nothing in this section shall preclude the Board from amending the agenda at a meeting or hearing.

That before the January 17th public meeting, such notice of decision on the public agenda was posted appropriately on the website; that copies of the agenda, setting the case down for decision was available to the public on that day, and the Board took no action to amend the agenda, once the meeting began.

Under §408.10, the Board has the authority to:

Close the record at the end of a public hearing – as it did on the 20th of December 2017 – and, in a bench decision, vote at such time either to grant or deny the application. Alternatively, the Board may schedule the case for a regularly scheduled or special public decision meeting.

The Board chose the latter, scheduling the case as a decision meeting for January 17, 2018.

DC Code §1-207.42 – Open Meetings Act – § 2-571 states:

The public policy of the District is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them.

§2-575.5 offers:

Each meeting notice shall include the date, time, location, and planned agenda to be covered at the meeting.

The parties were provided full and complete information regarding the actions the Board was to take in regards to a decision meeting; and the meeting was properly noticed as a decision meeting and all parties relied on that.

Any chair of any commission, has the legal authority to conduct their meetings in a manner they deem appropriate and befitting the office they serve, yet the conduct of those meetings must adhere to the legal standard established for notice, under the Open Meetings Act, (as

noted above), in order to be considered *valid* and properly noticed; otherwise, anything proceeding from that meeting, (with respect to this one case) makes it *invalid*, for failure to properly notice the meeting.

In the immediate instance, the Board's meeting on January 17, 2018, procedurally, started in a process of deliberative decision-making fashion, but dissolved into confusion and uncertainty, as Board Members labored to come to a decision.

On two (2) occasions, the Board's Chairman sought advice from the commission's sitting attorney-advisor – Mary Nagelhout – and its secretary, Ms. Tracey Rose,² on how the meeting was being conducted, at one point acknowledging, it was a “*public meeting*” and contemplated “*reopening the hearing.*”³

On the third (3rd) attempt⁴ the OAG's office recommends reopening the hearing, giving notice to the parties and call them back in; she further advises:

“You cannot turn a decision meeting into a hearing.”

The Board ignores that advice and recalls the parties back to the table.⁵ Testimony is then taken from anyone who had something to say.

§408.7 requires *all testimony shall be provided under oath or affirmation*, but there were persons called before the Board to testify – who did testify – who did not take the oath or make the affirmation, nor did they fill out any witness cards, as is required under Board rules.

This was neither intentional nor an oversight, but only serves as further evidence to suggest the parties were not there to offer testimony, as it was not noticed as a public hearing, but a decision meeting.

Given the above, coupled with the ambiguity and confusion – decision vs. public meeting – surrounding the discussion and the uncertainty of how extensive the responses of the parties could

² BZA Case #19581 Video -- 1st instance/looking for help from OAG/Secretary – 1:35:21; 2nd instance – 1:41:33

³ 1:41:57/public meeting right now; reopen hearing

⁴ BZA Case #19581 Video – 1:44:14/OAG

⁵ BZA Case #19581 Video – 1:51:07/BZA Chair recalls parties

or should have been, we motion to have the record reopened in order to conduct a more orderly review of the facts, as it was apparent the commissioners, by their own admission,⁶ were not fully informed in their deliberations and neither party – the Applicant or CNDI-LA – were anticipating being heard from at all.

CLOSING

§602.4 On its own motion, the Board may reopen the record prior to making a final decision for the purposes of requesting additional submissions or conducting a further hearing on designated issues.

§602.5 Notice of any further hearing need only be provided to the parties. Notice of the reopened record and any further hearing, plus a designation of the issues, shall be forwarded to any party who appeared and participated in the earlier hearings. If only additional submissions are requested, the notice shall identify which parties are required to make the submission which parties may reply, and the time period for doing so. If a further hearing is to be held, the notice of such hearing shall be sent at least ten (10) days prior to the date set for the further hearing.

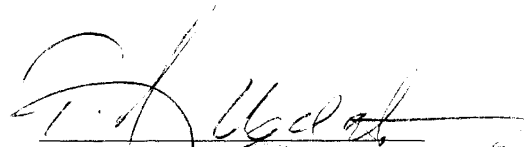
Our efforts to reopen this case are not to delay this Board's ultimate decision, but to stand firm on the foundation of protecting the integrity of the process and procedure, and as such, being in line with Title 11 – Zoning: Subtitle Y – Board of Zoning Adjustment Rules of Practice and Procedure §105.3(f):

Members of the Board shall avoid all actions, which might result in, or create the appearance of, the following: (f) Affecting adversely the confidence of the public in the integrity of government.

CONSENT

Despite diligent efforts, consent could not be obtained. We initially addressed our concerns to the OAG, who advised this motion. We laid out our concerns to all parties of record. The Applicant was to the only one to respond and deny our request to support this motion before this filing.

Respectfully submitted,



Taalib-Din A. Tauqdah
1373 Jefferson St., NW, Washington, DC 20011
Phone: 202-421-8945 / E-mail: tauqdah@aol.com

⁶ BZA Case #19581 Video – 1:30:07/Vice-Chair Hart apologizes for misstating CNDI-LA's position

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Tuesday, this 23rd day of January 2018, I served a copy of the foregoing Motion to Reopen BZA Case #19581, via e-mail or hand-delivery, to the following:

Attorney Cary Kadlecck
Goulston & Storrs
ckadlecck@goulstonstorrs.com

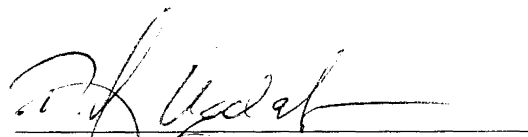
Maxine Brown Roberts
DC Office of Planning
Maxine.brownroberts@dc.gov

Aaron Zimmerman
District Department of transportation
Aaron.zimmerman@dc.gov

Advisory Neighborhood Commission 4C
c/o Commissioner Jonah Goodman, Secretary – SMD 4C10
4C10@anc.dc.gov

and

Commissioner Maria Barry, SMD 4C02
4C02@anc.dc.gov


Taalib-Din A. Uqdah
obo/CNDILA

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

BZA CASE #19581

**PARTY: COMMITTEE OF NEIGHBORS DIRECTLY
IMPACTED BY LAMB APPLICATION (CNDI-LA)**

EXHIBIT #130
**RESPONSE TO APPLICANT'S
SUPPLEMENTAL SUBMISSION**
DECEMBER 13, 2017

**TAALIB-DIN A. UQDAH
OBO/CNDI-LA
1373 JEFFERSON STREET, NW
WASHINGTON, DC 20011
202-421-8945
TAUQDAH@AOL.COM**

COMMITTEE OF NEIGHBORS DIRECTLY IMPACTED BY LAMB APPLICATION

December 13, 2017

Chairman Fred Hill
DC Board of Zoning Adjustment
141 4th Street, NW, Suite 200S
Washington, DC 20001

VIA IZIS: 12/13/2017

RE: BZA Case #19581 – Response to Applicant’s Supplemental Submission

Dear Chairman Hill and Members of the Board:

In the above referenced case, the Applicant, Latin American Montessori Bilingual (LAMB), is making their request for special exception approval to allow the establishment and co-location of a public charter school with a private school – Kingsbury – in a well-established neighborhood, protected by a R-16 zoning overlay.

At the conclusion of its November 15, 2017 public hearing, the Board requested the Applicant provide additional information related to this matter, which was timely filed December 06, 2017. CNDI-LA, a party in this case, files this response to that submission.

1. Performance Monitoring Plan (PMP)

While Applicant may offer some provisional mechanisms that, “. . . (capture) transportation metrics that work to minimize impacts and achieve multi-modal goals.” Those impacts, as described, are the direct results of the Zoning Regulations that address a R 16 Zoning Overlay, where the Subject Property is located.

Reviewing those requirements, juxtaposed to the Applicant’s responses to the PMP, falls short of expectations, because it does not recognize the core issues that have placed the Applicant before the Board in the first place.

The ultimate purpose of the PMP is to, in effect, change certain patterns of behavior of LAMB parents, faculty, staff and visitors, in an effort to reduce vehicular traffic flow to and from the Subject Property.

- None of the school examples listed, are located in a R-16 Zone;
- No accurate or fair monitoring requirements, collected once, each year for 3 years, is going to give either the Applicant or the community the data it needs to make an informed decision – is this working – it’s insufficient;
- To be consistent, the vehicle count for all site driveways should be extended to *pick-up* and not just “*morning school drop-off*”;
- With projected 600 students, plus faculty staff and visitors, 295 vehicles per day is unacceptable – it’s impactful – half the student population;
- Vehicle occupancy counts may be misleading, as all occupants of a vehicle – especially children – may not be dropped-off at LAMB;
- Applicant should clarify the use of *video counts*, as opposed to other methodologies listed; i.e., traffic counts/counters;
- The “*Documentation of any changes to (TDM) program from previous year,*” should be a part of DDOT’s sign off compliance with the PMP/TDM; and
- The provision requiring this inclusion, should be provided to CNDI LA without demand.

Data Collection Efforts

Data collected once-per-year, on a loosely described *typical day*, does not get us where we need to be, if the goal is to ameliorate adverse impacts on the community, in accordance with the R-16 Zoning Overlay. If the Applicant's data collection is not going to be consistent more than once-per-year – there should be no concern about returning to the BZA.

The Applicant's data collection efforts mirror the PMP, which CNDI-LA already finds to be unacceptable in that it:

- Fails to distinguish between uses of *manual counters vs. video counters*;
- Monitoring should address both pick-up and drop-off, with manual/video counters, if the Board is going to accept a once per year report.
- Counting the number of students, without putting the data into context, is dicey. Any child in a vehicle for drop-off or pick-up, depending on when the monitor views them, may not be a child going into or coming out of the Subject Property.

Analysis Methodology and Compliance

The Applicant's data collection and reporting to DDOT, will be over a 3-year period, to include the 2018-2019, 2019-2020 and 2020-2021 school years. We contend:

- This is inadequate; self-certification is not in our best interest in determining if LAMB is in compliance with any performance monitoring. With specific concerns and requirements under the R-16 Zoning Overlay – determining impacts – no one can offer any cogent analysis that any performance matrix is being met;
- Three (3) reports over 3 years, equates to 1.67% of the total 180 schooldays – not enough data to do a thorough analysis.
- Drop-off/pick-up area queues and video counts – manual counts should confirm video counts – should be consistent with the reporting process throughout.
- Before DDOT offers a compliance sign-off, they should meet with the community and explain how the data collected comports with the R-16 Zoning Overlay to:
 - Improve public review and control over the external effects of the Subject Property;
 - Explain any adverse impacts and how the Applicant has ameliorated those impacts on the immediate and nearby neighbors;
 - Recognize and control the external effects of the Subject Property's non-residential use; and in general,
 - Protect the integrity of this neighborhood/residential community.
- CNDI-LA should be required to sign-off on DDOT's approval; such approval not to be unreasonably withheld;
- If vehicle trip targets are exceeded or queues are shown backing into public space, causing the Applicant to both adjust and improve the TDM program, before gaining approval on adjustments, we request that:
 - There be sufficient data for two (2) more consecutive years showing compliance with the adjusted, improved conditions; and
 - The Applicant's Certificate of Occupancy shall not be issued until such certification is obtained.

- Applicant is calling for analyzing its own data, to determine accuracy; there are no community fail-safes that target solving any issues observed, only the Applicant's assurance that it will adjust to its own failures; and
- Recognizing and resolving any of the Applicant's adverse impacts on the community, by offering *adjustments, education, improvements, reductions*; then what? The Applicant will still want to occupy the space with a failed plan.

PMP Timing and Completion

Not sure what the Applicant is relying on or what is meant by, "exceeding the DDOT conditions" because they have not pointed it out.

The implementation of the PMP has always been a DDOT condition of approval; to say you're going to implement it, "starting in the first year," is a forgone conclusion; Applicant's approval hinges on the collection of its *scant data*.

Three-years of reports, is exactly 3 reports, not twelve (minimum), which CNDI-LA would like to see one each quarter - for the next 3 years.

The alternative being offered by the Applicant - "*whichever is later*" - should be stricken. It diminishes the effectiveness and delineation of the reporting data, (minimal as it is). The Applicant could wait out its 600-student enrollment period and never provide any data.

Data, consisting of the two latest consecutive years, assumes the first year will draw compliance. If this is accepted, data should be collected more frequently - once every three months - as 2 out of 3 successful consecutive reports, when there are only 3 reports to start with, is not a good harbinger of things to come.

The Applicant addresses no remedy, if they do not meet the PMP conditions, preferring instead to increase its enrollment to 600, and once it does, be under no more scrutiny.

The Applicant's proposal and responses in this sub-section, coupled with and what has been responded to thus far, does not adequately and directly address our concerns:

- o The Applicant is not viewing its use of the space, as if there is a problem that can't be fixed;
- o Their proposals and remedies, and that of both DDOT and OP, offers no improved public review and control over the external effects of LAMB's use of the space; and
- o It does not ameliorate any adverse impacts on the immediate and nearby neighbors.

2. Anticipated Mode Splits

There is skepticism in the numerical data and tables; each party conforming them to what we would like to be reflected. We are not so much concerned with what the numbers do say, but what they don't say.

The Applicant is expecting less reliance on vehicular traffic because of, "... *the concentration of families in Ward 4*," but we view this as a flawed assumption and should not be a serious consideration for two reasons:

1. Often described as one of the largest and most influential Wards in the city, it is inconceivable that because you live in the Ward, you will more than likely not drive. The very opposite is true; and

2. As a public charter school, accepting students from all over the city, versus a *neighborhood public school*, affected by specific geographic boundaries, the concentration of families outside of the Ward are equal to or greater than those within its Ward 4 boundaries. From statistical data provided - Exhibit #96 - 51% of the student body's current enrollment lives outside of Ward 4, leaving the balance of the student/family population, residing within its boundaries. Ward 4 has at least 15 recognized communities; of those, it is reasonable to assume, only children residing in parts of Brightwood and 16th St. Heights would walk or hike to school; and at their primary to elementary ages that could be debated. The rest - 2 out of 15 neighborhoods - would drive, leaving the rest of the student population, citywide - 51% - driving or taking public transit.

The only constant in both Tables is "*Passenger in car that drives*" - 4% - that we assume are children in a car pool, which equates to 24 out of 600 children.

Taking the Applicant's numbers associated with Table 2: Expected Mode Splits upon Consolidation at Kingsbury, we don't see how the Applicant arrives at numbers, anywhere near compliance, assuming the student population were at its requested 600 pupil capacity, not including an additional 110 faculty and staff.

By using the Applicant's Table 1 compared to Table 2, which shows changes in percentages up or down, we calculated / interpreted the Applicant's numbers to mean, on average:

414 - Driven
24 Passenger in car that drives
45 - Public Transportation
33 - Bike
84 - Walk

By our calculations, if these numbers hold true, we're looking at a significant number of vehicles converging at one location, passing through other congested locations - day cares and schools - in the immediate area. There is no adequate demonstration of how the Applicant proposes to get this number down to an acceptable level; even 295 vehicles per day is daunting when you consider over the past 17 years there may have been that number in a week.

3. **LAMB's Student Population Growth Plan**

REQUIRES FURTHER EXPLANATION

4. **Good Neighbor Policy**

The Applicant's Good Neighbor Policy is particularly lacking. Nowhere in the *policy* does the Applicant recognize CNDI-LA, by name, as it did in its November 15, 2017 presentation;¹ preferring the term, *surrounding community* instead.

Further, the Applicant's Good Neighbor Policy reads more like a *conditions manual* for LAMB families - how they are to behave - where we believe it should address a policy that is sensitive to our enumerated asks and concerns, as addressed in our detailed Stand Alone and Construction Conditions,² along with the amelioration of adverse impacts on the neighborhood required in a R-16 overlay zone.

¹ See Exhibit #114 - Applicant's Power Point Presentation - Bottom of Page 24

² See Exhibit #118 - Stand Alone Conditions, and Exhibit #119 - Construction Conditions

Whether or not the Applicant's Good Neighbor Policy submitted here or at the public hearing meets the Board's expectations is their decision to make, but we respectfully recommend the Board consider the following conditions.

- Adopt Good Neighbor Policy and other conditions by CNDI-LA - Exhibit #118;
- A disciplinary response towards misbehaving staff, families and students, should require a written report provided to CNDI-LA - identifying info redacted - without demand, consistent with other notices outlined in our conditions;
- Use of 14th Street, should be the only driving route, not the primary one. We reiterate, the two West-gates at the Subject Property is for staff and faculty only; no other use permitted; and
- The Good Neighbor Policy should include CNDI-LA in all instances and not just a reference to the *surrounding community*.

5. **LAMB Community Committee Meetings**

Applicant's proposal for a LAMB/Community Committee (LCC) comprised of nine (9) representatives is troubling.

- The LCC process should be one of cooperation and information gathering, not authoritative. It should address any and all conditions that pertain to a R-16 Zoning Overlay, in protecting the integrity of the affected neighborhood;
- We object to an odd number LCC-body, which suggest decisions by vote;
- The make up of the LCC, is heavily weighted in favor of the Applicant;
- ANC 4C is represented by 10 SMD Commissioners, equating to 20,000 residents; and
- CNDI-LA, while welcoming LAMB, has been the driving force behind opposition to the Applicant's resistance to returning to the RZA, setting down enumerated conditions, if incorporated into the Board's order, should give us a larger representation on the LCC.

Further, the Applicant's final offer of a "self-imposed flogging," is insulting and ludicrous, carrying no force of law - words on a page - just making up "stuff".

- What is filing a grievance with the LCC/ANC going to accomplish when the make-up of the LCC is heavily in favor of the Applicant?;
- Appointing the ANC as a mediator, when they are on record as being supportive of the Applicant's special exception, with minimal to no conditions or even depending on them to "*escalate the concern*," does not make them *mediator worthy* and it contradicts their *authority* to not address it, leaving one option for a complainant;
- Once the Applicant is granted special exception, even with its "alternate condition" of presenting compliance with DDOT's approved PMP and sign-off on its Certificate of Occupancy by the Zoning Administrator (ZA), the Applicant is fully aware that the integrity of that process - going to the office of the ZA - offers the community no protections under the R-16 Zoning Regulations, as it relates to Overlays;
- The ZA's own testimony before the Board November 15th confirms this: "he does not look at other conditions - "*DDOT is actually making the determination . . . if the Board were to accept the language, then I would agree*;" and
- The Applicant has omitted any mention of "*timeliness*," - what will drive any concerns - relating to the above conditions.

6. Financing Challenge for Public Charter School

This submission mirrors Applicant's earlier testimony that this Board found to be lacking. The Applicant is not being forthcoming to the Board and by extension, the community.

If the Applicant's desire and intention is to comply, there should be no claim of "*lender uncertainty*," if you meet the conditions in either scenario; whether it's 3-years of reporting/2 consecutively, or 2-year compliance, with conditions; do either and you're in.

In other words:

- We don't see the difference in requiring compliance with the conditions of the PMP, which is, (at minimum), a 3-year ordeal, or accept a 2-year return to the BZA, show compliance as we've outlined and get your 600; by the numbers – 2 vs. 3 years – our offer is better, if, in either instance, compliance is the goal;
- Other financing tools are available, but there's no indication they were considered:
 - There are other companies, some that have been in business over 100-years that are dedicated to charter school lending and financing services;
 - Tax-exempt bonds are available, which may be issued as letters of credit or floating rate bonds or long-term fixed-rate bonds. There's an extensive list that can be tailored to the needs of any charter school, should they care to.
 - On the federal level, instead of taxpayer-backed bonds that school districts can float, charters have a mix of financing tools at their disposal to reduce the cost of capital for them in acquiring buildings to suit their needs.
 - Tax-exempt private activity bonds for nonprofits
 - New Markets Tax Credits; and
 - Qualified Zone Academy Bonds
- According to the Applicant,⁴ the lending issue is not LAMB's, but a Building Hope one. Continuing to invoke LAMB's name, as if they are owners, is misleading. Their involvement as a *tenant* is secondary to Building Hope's as an *owner*;
- If the loan is being structured to accommodate both landlord and tenant, that needs to be said and provide (we think) proof of that relationship – a MOU, LOI, or pre-loan conditions. Otherwise, as a non-public charter school purchaser, there is no need for any lender or Building Hope to be concerned about enrollment numbers.
- Any lenders *risk aversion* doesn't magically go away just because the words "*come back*" disappears from the Board's order; there are still other conditions which need to be addressed, more specifically any that pertain to the R-16 zoning overlay;
- The Applicant's claim, ". . .returning to the BZA for an enrollment increase . . . risk the viability of the lender's investment in the school," is false on its face, because LAMB is not the purchaser, Building Hope is;
- Building Hope is most concerned about returning to the BZA, not LAMB; and
- This relationship leaves the community in the unenviable position, should there be any issues, do we deal with LAMB as the tenant, or Building Hope as the owner.

⁴ See Exhibit #14

7. Applicant's Proposed Conditions

In this and previous statements, CNDI-LA has succinctly stated its support for the Applicant occupying the Subject Property, with the condition they return in 2-years and demonstrate to the BZA that it is full compliance with the Board's conditions.

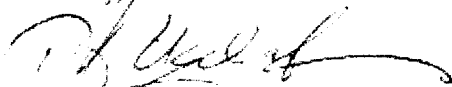
We are relying on the integrity of this Board and its interpretation of the R-16 Zoning Overlay - its stated intent and purpose - in determining which conditions will or will not cause an adverse impact on a neighborhood that for the past 17-years has only known a private school with an enrollment - currently at 108 - that never got close to its allowable BZA-approved 300 students.

We will not insult the collective intelligence of this Board by repeating our objections to the alternate condition proposed by the Applicant; we believe we've made that position clear.

The Applicant did not make several attempts before or at the time of its filing - only one - Monday, December 04, 2017. We acknowledged and apologized to the Applicant, twice that its *Final Stand-Alone Conditions* was an internal title, distinguishing it from numerous others circulated amongst us. It was never intended to suggest that CNDI-LA was not willing to talk with the Applicant's and did so December 08, 2017, with an agreement to speak again before the BZA hearing December 20, 2017.

CNDI-LA looks forward to vetting these issues before the Board on the 20th and stand ready to answer any concerns or questions either the Applicant or Board may have.

Sincerely,



Taalib-Din Uddin
obo/CNDI LA
Attachment

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

BZA CASE #19581

**PARTY: COMMITTEE OF NEIGHBORS DIRECTLY
IMPACTED BY LAMB APPLICATION (CNDI-LA)**

EXHIBITS #157 / #158

**RESPONSE TO ANC 4C'S APPLICANT
SUPPORT SUBMISSION
AND
E-MAIL COMPILATION
DECEMBER 19, 2017**

**TAALIB-DIN A. UQDAH
OBO/CNDI-LA
1373 JEFFERSON STREET, NW
WASHINGTON, DC 20011
202-421-8945
TAUQDAH@AOL.COM**

COMMITTEE OF NEIGHBORS DIRECTLY IMPACTED BY LAMB APPLICATION

December 19, 2017

Chairman Fred Hill
DC Board of Zoning Adjustment
441 4th Street, NW; Suite 200S
Washington, DC 20001

VIA IZIS: 12/19/2017

RE: BZA Case #19581 – Response to ANC 4C's Applicant Support Submission

Dear Chairman Hill and Members of the Board:

In the above referenced case, the Applicant, Latin American Montessori Bilingual (LAMB), is seeking special exception approval to allow the establishment and co-location of a public charter school with a private school – Kingsbury – in a well-established neighborhood, protected by a R-16 Zoning Overlay.

At the conclusion of its November 15, 2017 public hearing, the Board requested Advisory Neighborhood Commission 4C, (ANC 4C) provide a resolution pertaining to the Applicant's and Office of Planning's (OP) alternative condition.

Before any ANC is allowed to produce any official recommendation, there are specific legal requirements that must be fulfilled:

- Seven (7) days written notice of each Commission meeting;
- Notice must be given in two (2) different ways, selected from a list of four (4) alternatives, by law:
 1. Postings in at least four (4) conspicuous places in each SMD;
 2. Publication in a city or community newspaper;
 3. Distributing, via e mail, through a mailing list; and
 4. Other methods of the Commission's own choosing, which to be valid, requires a vote on that method at a public meeting, subsequently recorded in the minutes;
- 5. Required to provide an opportunity at every meeting for residents to speak out; and
- 6. As a general rule, a SMD Commissioner keeps their constituents informed and represents their interest.

Additionally, each Commission is required to have bylaws that govern its operation and internal structure and it assumes each Commission will follow these bylaws, which amongst other things may include, but not be limited to:

- Procedures for acting on committee recommendations; and
- If revised, filed with the DC Council and the OANC within 30-days of the changes.

If all of the above conditions are met, as the Board is aware, under DCMR § 1-309.10, the Board is required to provide each ANC notification of any cases pending before it and accord any ANC *great weight* in its own deliberations, but only if they follow and meet certain specific conditions and requirements, amongst them:

- Reasons for the ANC's recommendations, more specifically why;
- How many Commissioners are needed for a quorum;
- The vote count;
- The date of the ANC meeting; and
- Signatures of the Chairperson or Vice-Chairperson.

In the immediate instance, ANC 4C failed several of these conditions. Amongst them:

1. Failed to keep their constituents informed and represent their interest.
2. Failed to provide seven (7) days written notice of its 12/13/17 public meeting;¹
3. Failed to give notice in two (2) different ways of its 12/13/17 public meeting;²
4. Failed to provide an opportunity for residents to speak at several ANC meetings;³
5. Violated its own bylaws by not providing documentation timely;⁴
6. Failed to file its new bylaws with the appropriate authority, as required;⁵
7. Failed to provide reasons consistent with law, in making recommendations to the BZA in the above referenced case;⁶
8. Failed to state number of Commissioners required to make a quorum;⁷ and
9. Failed to vote on the specific issue ordered by the Board;⁸

Failed to keep their constituents informed and represent their interest.

The subject property is located in SMD 4C02, represented by SMD Commissioner Maria Barry, serving her first full term, having joined the full ANC 4C Commission in October 2015.

Unofficially, by her own admission, Commissioner Barry knew of the Applicant's pending move before the Commission's official 08/22/17 notification from the HZA. The Applicant's – at one time Kingsbury and LAMB – caused confusion in this process when it decided to separate their cases. Commissioner Barry and other Commissioners had already had conversations with representatives of the Applicant and/or LAMB parents who had been discussing the pending move to Kingsbury for months.⁹

Notices came from the HZA at the very end of August and it wasn't until Tuesday, September 12, 2017 @ 9:41PM¹⁰ that Commissioner Barry notified her constituents that:

"Based on feedback (she) received from the community (she) asked Building Hope/LAMB to present tomorrow evening at the ANC4C meeting . . . (and) I will put a meeting together . . . in the next few weeks . . ."

¹ See E-mail compilation December 12, 2017 – ANC 4C Agenda – December 13 Meeting

² ANC 4C relies on notice in the NW Current, which is not available anywhere in SMD 4C01, 4C02 or 4C03. Commissioner Barry did not notify her constituents until the day before the ANC meeting; See E-mail compilation: Commissioner Barry Dec 12, 2017 Agenda notification

³ See all E-mail compilations between November 01, 2017 and December 06, 2017

⁴ See ANC 4C Minutes – April 12, 2017 – Item #6 under New Business

⁵ § 1-309.11(d)(3) requires a 30-day filing with the Council and the OANC of bylaws and amendments. There is no evidence that ANC 4C did either.

⁶ None of ANC 4C's resolutions specifically addressed any issues related to the R-16 Overlay Zone and its impact on the immediate community and only regurgitated the Applicant's submission word-for-word. They did not address any of CNDI-LA's concerns or pleadings – their own constituents

⁷ See Exhibit #133 – first sentence; quorum is left blank

⁸ See Exhibit #133 – the first paragraph – they only voted to "support the application of LAMB for the establishment of a public charter school.

⁹ See NW Current, Volume L; No. 48 – Wednesday, 12/06/2017 – Charter aims to consolidate at Kingsbury by Current Staff Writer Grace Bird

¹⁰ See CNDI-LA E-mail compilation 09/12/17 – 09/14/17

Inconsistent with ANC bylaws and DCMR, the community (and we believe some ANC Commissioners) were never notified, but the Applicant was placed on the agenda and they were heard.

Two days later - Thursday, September 14, 2017 @ 10:34PM - Commissioner Barry sent an e-mail announcing two community meeting dates - 09/20/17 and 09/25/17 - with a location to be confirmed by the following day.

Commissioner Barry did not meet with her constituents opposed to this special exception being granted, until Sunday, October 22, 2017, a full 2 months past her official notification from the BZA.

At its November 08, 2017 ANC public meeting, Commissioner Barry introduced a resolution in support of LAMB, despite promises to include OP's condition that they return to the BZA prior to applying for a C of O for 600 students and 110 faculty and staff; that condition had to be forced on Commissioner Barry, who reluctantly accepted it, but unethically along with her colleague SMD 4C01 Commissioner Charlotte Nugent - sent in separate letters of support¹¹ in stark contradiction to the vote of the full ANC.

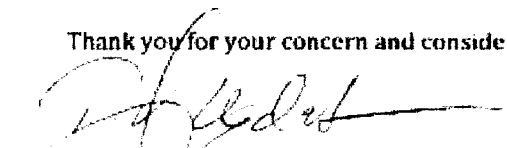
CONCLUSION:

Therefore, CNDI-LA respectfully request this Board not accord ANC 4C great weight, for the reasons articulated above.

Under DCMR § 1-309.10 the BZA is required to give this great weight during its deliberations, raised in the recommendations, issues or concerns by the Commission and acknowledge that the ANC was the source of these recommendations, and explicit to any issues or concerns.

We don't believe this BZA, in good conscious, can do that; CNDI-LA raises too many inconsistencies, ethical and legal violations in its response to the ANC's submission.

Thank you for your concern and consideration.



Taalib-Din Qudah
obo/CNDI-LA

¹¹ See Exhibit #72; Paragraph 4 and Exhibit #70; Paragraphs 4 & 5 respectively - 11/12/17

BZA Case #19581 – CNDI-LA
E-mails: DECEMBER 10, 2017 thru DECEMBER 12, 2017

Re: CNDI-LA Presentation Before ANC4C 12/13/2017

From: Tauqdah <tauqdah@aol.com>

Sent: Sunday, December 10, 2017 10:43:46 AM

To: Teutsch, Zach (ANC 4C05); + 9 others

Cc: CNDI-LA

Subject: CNDI LA Presentation Before ANC4C 12/13/2017

Good Morning Chairman Teutsch, members of ANC 4C:

The Committee of Neighbors Directly Impacted by LAMB Application, (CNDI-LA), has attached its written presentation, per your request, for the Commission's consideration in voting against an "Alternate Condition" referencing BZA Case #19581: A special exception in a R-16 Overlay Zone for LAMB PCS.

The language of that proposed Alternate Condition, according to the applicant and their attorney, from a 12/08/17 conference call, is as follows:

"After Kingsbury departs the property and LAMB applies for a certificate of occupancy to occupy the entire building, LAMB shall demonstrate to DDOT and report to the Zoning Administrator that it is in compliance with the performance monitoring plan ("PMP"). If LAMB is not in compliance with the PMP plan, then LAMB shall not be granted a certificate of occupancy unless given approval by the BZA."

If the Resolution before you contains language different from what's above, we respectfully request the opportunity to address that change before you, orally. On behalf of CNDI-LA, Mr. John Strand will make himself available to the Commission to address those changes, (if any), answer your questions or clarify any statements made in our written presentation. CNDI-LA respectfully request you and your fellow commissioners, vote against this Alternate Condition.

Thank you all for your concern and consideration.

My Best Regards, Taalib-Din Uqdah obo/CNDI-LA

Sun, Dec 10, 2017 11:54 am

Teutsch, Zach (ANC 4C05) (ANC 4C05) (4C05@anc.dc.gov) To: you + 19 more

Dear Taalib-Din,

I wanted to write to acknowledge the receipt of this written testimony and thank you and your fellow CNDI LA members for sharing this thoughtful analysis.

Jonah, please add a link to this document to our agenda so it is available to the public.

Best,

Zach / Zach Teutsch Chairperson, Advisory Neighborhood Commission 4C

Tue, Dec 12, 2017 2:50 pm

Goodman, Jonah (SMD 4C10) (SMD 4C10) (4C10@anc.dc.gov) To: you + 19 more Details

I've been traveling for a few days. **I'll try to do it late tonight.**

[CBENADC] ANC 4C Agenda - December 13 Meeting

Tue, Dec 12, 2017 7:32 am

Maria Barry (CBENADC@yahoo.com) To: CBENADC + 1 more

Below is the agenda, as of today, for the December 13, ANC 4C Meeting. Portions of the agenda may change between now and the meeting. Location: Petworth Library (basement meeting room) Date: Wednesday, December 13, 2017 Time: 6:30 - 9:00 pm

BZA - BOARD OF ZONING ADJUSTMENT: [BZA case #19581 under New Business]

NEW BUSINESS: BZA case #19581, LAMB School, 5000 14th St NW, Kingsbury Center (Commissioner Barry) ANC resolution (coming soon)

Teutsch, Zach (ANC 4C05)

Dec. 12, 2017 to Maria, me, Rami, Jonah

Thanks for sharing, Maria. Zach Teutsch Chairperson, Advisory Neighborhood Commission 4C

Tue, Dec 5, 2017 8:32 pm

Teutsch, Zach (ANC 4C05) (ANC 4C05) (4C05@anc.dc.gov) 4c05@anc.dc.gov

Hi Taalib-Din,

Thanks for your note. We discussed this last night at our internal meeting and decided that best approach was to receive, review, and distribute written testimony of up to 1,000 words from CNDI-IA and the proponent. We will link the letters to the agenda and then distribute the agenda (and thereby the letters) to the community via listservs and our website in advance of the meeting.

The bylaws call for the resolution to be distributed to Commissioners at least 72 hours in advance of the meeting. I believe the best practice is to also distribute it to the public (via the agenda/website) as it is available to Commissioners. Additionally, I think it would be a best practice for Commissioner Barry to also share with interested community groups and nearby neighbors, perhaps via CNDI-IA and I hope she will. Best, Zach/Zach Teutsch Chairperson, Advisory Neighborhood Commission 4C

Tue, Dec 5, 2017 9:38 pm

Goodman, Jonah (SMD 4C10) (SMD 4C10) (4C10@anc.dc.gov) 4c10@anc.dc.gov

The ANC bylaws require draft resolutions to be distributed to the Commission at least 48 hours in advance of the meeting, not 72 hours.

From: Tauqdah <tauqdah@anc.dc.gov>
Sent: Tuesday, December 5, 2017 10:55:22 PM
To: Goodman, Jonah (SMD 4C10), + All Commissioners
Subject: Re: ANC Agenda/Presentation

Thank you Commissioner Goodman, can we take this to mean that the ANC's acceptance of "written testimony," in this instance, up to a 1,000 words, has the same 48 hour deadline?

Regards, Taalib-Din Uqdah

Wed, Dec 6, 2017 12:33 am

Teutsch, Zach (ANC 4C05) (ANC 4C05) (4C05@anc.dc.gov) 4c05@anc.dc.gov

Dear Taalib-Din,

Thanks for your openness to this suggested process. For inclusion in the agenda please make sure to share at least 48 hours ahead but as early as you like. The earlier you share the document the more time Commissioners will be able to review it and offer any questions. I respectfully apologize and thank Jonah for his correction of my mistake on the hours required by the bylaws.

Good evening to all.

Best, Zach/Zach Teutsch Chairperson, Advisory Neighborhood Commission 4C

BZA Case #19581 – CNDI-LA

E-mails: November 01, 2017 thru December 06, 2017

Re: Party Status Request for BZA case# 19581 Wed, Nov 1, 2017 9:11 am

From: Tauqdah <tauqdah@aol.com>
Sent: Wednesday, November 1, 2017 9:11:30 AM
To: Goodman, Jonah (SMD 4C10), Barry, Maria (ANC 4C02)
Cc: Teutsch, Zach (ANC 4C05);
Subject: Re: Party Status Request for BZA case# 19581
Good Morning Commissioners.

From the looks of ANC 4C's posted agenda, it appears as though our 10/22/17 agenda request of Commissioner Barry to the Chair, for a 5-minute presentation during November's public meeting on our concerns about LAMB was rejected, in favor of the applicant's traffic study, that's disappointing.

As you can see from our 10/31/17 filing, we have issues and concerns we felt the Commission and the public needed to be made aware of, but that's your call. For accuracy and correctness, the BZA Case #, which appears on the agenda is wrong. The correct BZA Case # for LAMB'S application is 19581, not 19861, an error which should be corrected for the public record.

Regards, Taaib Din Uqdah

Wed, Nov 1, 2017 11:25 am

Teutsch, Zach (ANC 4C05) (ANC 4C05) (4C05@anc.de.gov) To: you + 3 more
Thanks for your note and, as always, for your community leadership, Taaib-Din.

We are way over on time for the LAMB project (we have now heard about three hours of testimony). Several Commissioners (including me) are happy to read any materials you'd like to share.

Thanks, Zach / Zach Teutsch Chairperson, Advisory Neighborhood Commission 4C

Taaib-din Uqdah (tauqdah@aol.com)

To: Teutsch, Zach (ANC 4C05) (ANC 4C05) + 3 more

Thank you Mr. Chair. I'll do just that, although our recent filing as a Committee should cover most of what we have to say. I assume at some point Commissioners Barry and Goodman will share that filing with your colleagues for their review, before you vote to support or not. The alternative being to go online and see it for themselves. For my part, if a picture worth a 1000 words, what's a video worth? I'll forward 2 different ones to each of your colleagues for their consideration.

Regards -- Taaib-Din -- Sent from my iPhone

Re: ANC Agenda/Presentation

From: Tauqdah <tauqdah@aol.com>
Sent: Tuesday, December 5, 2017 7:02:53 PM
To: Teutsch, Zach (ANC 4C05); + 9 others **Subject:** ANC Agenda/Presentation
Good Evening Mr. Chair, Mr. Secretary and Commissioner Barry

As a follow-up to our 12/04/17 e-mail, where we requested the opportunity to make a brief presentation in the matter of an "alternative condition" for LAMB, PCS, have you all decided whether or not a representative from CNDI-LA will be permitted to offer a brief presentation -- no more than 5-minutes -- during the 12/13/17 public meeting before the full ANC, prior to its vote on (what we assume will be) Commissioner Barry's presentation of that redrafted alternative resolution? And, secondly, as an entity with party status in this matter, will we be afforded a copy of that resolution, before 12/13/17, in order for us to respond cogently to its contents and conditions?

Kindest Regards, Taaib-Din Uqdah

**BZA Case #19581 - CNDI-IA
E-mails: October 04, 2017 thru October 31, 2017**

On Oct 4, 2017 11:10 AM, "Doreen Thompson <dvathompson@yahoo.com [16thStNA] <16thStNA@yahoo.com> wrote:

October 11 ANC Meeting Agenda

Thanks Maria

I don't see the Resolution on the Agenda -- am I overlooking it?

I also understand from your September 25th meeting that the Applicant would seek a December BZA hearing date. However, I see from your e-mail that the BZA hearing is scheduled for November 15th.

Will the Application be on the November 8th ANC Agenda? ANCs must file this form at least seven (7) calendar days in advance of the hearing, if they wish to participate in a public hearing under Subtitle 7, § 406.3 and Subtitle Y § 406.3.

Doreen

Re: [16thStNA] Re: [CBENADC] October 11 ANC 4C Agenda

Wed, Oct 4, 2017 11:24 am

Maria Barry <marriabarry@gmail.com>

[CBENADC] <CBENADC@yahoogroups.com> CBENADC

The agenda is a work in progress and I am submitting request to pass resolution to ask that DDOT review the LAMB traffic study and send back to the community sooner than 10 days before the scheduled Nov 15 BZA hearing. The ANC meets on Nov 8 and this will be on the agenda then.

I have been in touch with DDOT to find out when we will receive their review of the LAMB traffic study. If I hear anything else about a Dec BZA hearing date I will let folks know. Dominique Portune from Building Hope/LAMB can answer questions about the hearing date.

Thanks Maria

Re: Party Status Request for BZA case# 19581

--Original Message-----

From: Rami Rihani <rami.rihani@gmail.com>

To: 4C10 <4C10@anc.dc.gov>; Barry Maria (ANC 4C02) <4C02@anc.dc.gov>

Cc: Tauqdah <tauqdah@aol.com>

Sent: Tue, Oct 31, 2017 6:16 pm

Subject: Party Status Request for BZA case# 19581

Hello Mr. Goodman and Ms. Barry

I wanted to make you aware of the attached. I am part of a neighborhood committee that just filed for party status request in regard to BZA case # 19581 (Latin American Montessori Bilingual Charter School). The files have been uploaded to the BZA website and hard copies have been mailed to your address today.

BZA Case #19581 - CNDI-LA
E-mails: September 12, 2017 thru September 14, 2017

[CBENADC] Re: [16thStNA] LAMB PCS and Kingsbury

Tue, Sep 12, 2017 9:41 pm

Maria Barry maria.barry@gmail.com [CBENADC] [CBENADC@yahoo.com] To: CBENADC + 7

Thanks Dominique for sharing the traffic study (my google was not allowing me to attach!)

Based on feedback I received from the community I have asked Building Hope/LAMB to present tomorrow evening at the ANC4C meeting but we will then meet with the community so you can further understand this special exception request. **I will put a meeting together** with ANC4C01 (Charlotte Nugent) and ANC4C03 (Ulysses Campbell) along with the 16th Street Heights community **in the next few weeks** and Building Hope will move their zoning hearing until November.

Hope to see many of you at the ANC meeting at 6:30 tomorrow at the Petworth Library.
Best – Maria

[CBENADC] Building Hope: Proposed LAMB & Kingsbury Community Meetings

Thu, Sep 14, 2017 10:34 pm

Maria Barry maria.barry@gmail.com [CBENADC] [CBENADC@yahoo.com] To: CBENADC + 11
Good Evening,

Below, please find the proposed agenda for two upcoming community meetings.

Please let me know if anyone would like to add anything to the agenda. I am happy to update. Folks can come to both or one meeting. It will be a similar agenda both nights.

We will know if these dates work to hold the meeting at Kingsbury by COB today or tomorrow morning.

I wanted to share this with you. Please pass on to others. DRAFT Agenda

Meeting Dates: Wednesday, September 20, 2017 @ 6:30-8:30pm & Monday, September 25, 2017 @ 6:30-8:30pm

Location: Proposing Kingsbury and awaiting their confirmation

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

BZA CASE #19581

**PARTY: COMMITTEE OF NEIGHBORS DIRECTLY
IMPACTED BY LAMB APPLICATION (CNDI-LA)**

EXHIBIT #165

CNDI-LA'S CLOSING STATEMENT

JANUARY 10, 2018

**TAALIB-DIN A. UQDAH
OBO/CNDI-LA
1373 JEFFERSON STREET, NW
WASHINGTON, DC 20011
202-421-8945
TAUQDAH@AOL.COM**

Concerned Neighbors Directly Impacted by LAMB Application (CNDI-LA)

January 10, 2018

Chairman Fred Hill
D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 200S
Washington, DC 20001

Re: BZA Case No. 19581 – CNDI-LA’s Closing Statement

Dear Chairman Hill and Members of the Board

Your statement to CNDI-LA at the December 20th hearing about not being able to discern our position – whether as you stated – we, “*just don’t want this*” or whether we’re “*just really worried about it.*” has prompted us to provide this Closing Statement.

In response to your question about our position, we accept LAMB’s submission that proposes 310 students and 36 faculty/staff, but **we strongly oppose** LAMB’s Application at the 600-student population level plus faculty and staff, **without them returning to the BZA for approval at 600, plus the building of a 5000sf gymnasium.** We are also “*really worried*” since LAMB’s Application represents a vast departure in the current use of this property from Kingsbury’s existing 108 older-student population and 71 faculty and staff.

LAMB’s Application is Inconsistent with the District’s Comprehensive Plan and the Rock Creek East Livability Study. It Fails to Meet Requirements of the R-16 Zoning Regulations

The purpose of creating the R-16 Zoning Overlay in our little corner of the world was two-fold:

- A. To promote the conservation, enhancement, and stability of a low-density, single dwelling unit neighborhood for housing and neighborhood-related uses, and
- B. To control the expansion of nonresidential uses thereby preserving neighborhood quality of life. LAMB’s Conditions, presented to CNDI-LA and the BZA, do not adequately address or ameliorate the adverse conditions, which new and expanded non-residential uses are required to address in the R-16 Zoning Overlay:

1. Failure to Address Screened Off-Street Visitor Parking Requirement.

LAMB proposes to give the community notice of large events, but defines large events as one that has overflow parking and/or outdoor activities, excluding PTA meetings and other school-related activities. However, Overlay regulations require new and expanded non-residential uses to provide screened off-street visitor parking. According to the regulations, “*there shall be adequate, appropriately located, and screened off-street parking sufficient to provide the needs of the maximum number of occupants, employees, congregants, and visitors who can use the facility at one time.*” LAMB has failed to identify how it will meet this requirement for events likely to have attendees needing more than the 107 spaces currently available onsite.

2. Failure to Fully Identify and Address Noise from its Operations Affecting the Use and Enjoyment of Neighboring and Nearby Properties.

LAMB’s Application states, “any noise that the Applicant will produce will have a negligible effect on neighbors,” but provides no study or supporting data to substantiate this claim. The Overlay regulations requires LAMB to address whether or not, “*The non-residential use is capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions (U Section 205.2(a).*” which would include, but not limited to, traffic from student drop-offs and pick-up, delivery services, trash trucks – raising environmental concerns for a significant number of seniors near the property – as well as noise from outdoor playgrounds, (which are in close proximity to homes), HVAC units, etc.

Noise not adequately or fully addressed by the Application includes but is not limited to the following:

- a. **Noise from outdoor playground activities.** As indicated above, LAMB's Application says this will have a "negligible" effect and will be reduced with the building of the gym in later years. This does not address playground activities in the interim period. The Application further negates daytime noise from the playgrounds, which is of concern to many directly-impacted residents, who are retired or work from home. The community has experienced noise from Kingsbury play, several blocks away from the facility.
- b. **Noise from traffic.** LAMB's Application at page 8, while recognizing that the regulations require it to address traffic noise, it's not addressed, nor is it addressed in its traffic study. The traffic study addresses traffic routing, flow and timing at intersections, entry and exit points, transportation demand management and traffic operations plans, but not noise.

Moreover, as to traffic noise, CNDI-LA has consistently maintained that Piney Branch Road be used by faculty and staff only to reduce environmental (air quality) and noise impacts. Piney Branch lacks sidewalks and tree beds which places traffic close to nearby residents' bedrooms and homes. LAMB has not responded and has not explored alternatives, such as reconfiguring the property to allow for the 600 students arriving and departing by private vehicles to exit elsewhere or on 14th Street, thereby reducing the impacts on the community.

We also note, Kingsbury's student population primarily uses buses, which enter and exit on 14th Street and Kingsbury's commitment to not use Piney Branch Road was a condition precedent to the community's support of the 2000 Kingsbury application.

3. Failure to Adequately Address Major Objectionable Traffic Conditions Resulting from the Non-Residential Use as Required by the Zoning Overlay Regulations.

LAMB's Application at page 6 states that LAMB's operations will not cause adverse impacts. Yet, LAMB's Traffic Report concludes that *the project will not have detrimental impacts to the surrounding transportation network, assuming that all mitigation measures are implemented.* LAMB however, cannot implement the mitigation measures identified in the Report, particularly as to the significant identified impact to traffic at 14th & Gallatin Streets.

By example, As part of its Conditions of Approval, LAMB and DDOT are calling for:

- A sidewalk along the southern side of Gallatin Street between Piney Branch Road and 14th Street, NW, with new curb ramps and crosswalks, as required, as well as crosswalks specifically across Gallatin Street, NW at both Piney Branch Road and Iowa Avenue, to connect pedestrians to the existing sidewalk on the northern side.
- New curb ramps on the northern and southern-sides of Emerson Street at 15th Street, NW, and
- Reparades to all existing sub-standard curb ramps at the intersection of 14th Street and Farragut Street, NW.

CNDI-LA responds by noting, Not one of these *conditions* addresses traffic or transportation delays, as if adding sidewalks on a side street will *mitigate* or *reduce* travel-delayed impacts at nearby intersections, particularly 14th Street.

In addition, LAMB's Application, while highlighting the percentages of unused green space at that location and proposing to build a gym, does not address reconfiguring the space, which was set-up as a residence to reduce the traffic impact on the community. In other words, LAMB did not explore other alternatives.

From a zoning compliance standpoint LAMB's Conditions of Approval, which are titled "transportation, traffic and routing," do not address the concerns identified in its Traffic Study and become mere window dressing, particularly since LAMB does not want to return to the BZA for approval of 600 student-level. Returning to the BZA for additional approval, gives teeth to the implementation of these conditions and affords the community the required protections.

II. LAMB'S Conditions of Approval Do Not Satisfy the Overlay Requirements and CNDI-LA's Responses to LAMB's Conditions of Approval are Limited to LAMB Operating with 310 Students.

LAMB has presented a long list of Proposed Conditions of Approval, covering aspects related to traffic, good neighbor policy, lighting/noise design, school operations and construction. Most of these Conditions are either:

- A. Established legal requirements,
- B. Provisions already addressed in LAMB's application, or
- C. Responses to DDOT, which do not address traffic impacts identified in LAMB's Traffic Study, where queuing is used in place of the word idling.

While CNDI-LA has provided responses to these Conditions, it is important to state that all CNDI-LA's responses to LAMB's Conditions pertain to a school and property populations at the current limit originally granted to Kingsbury in its special exception and are not negotiations as to tolerance of conditions at the 600 student population level sought by LAMB.

Even though the applicant LAMB claims to have been a good neighbor in all three of its current locations, it is the sum of all three locations that we, as a neighborhood, subject to a residential zoning overlay, are worried about.

CNDI-LA has reluctantly agreed to allow LAMB to copy Kingsbury's footprint, with provisions to ensure better behavior, knowing Kingsbury never came anywhere near their 310-student threshold and was in violation of its zoning order. We maintain that LAMB should return to the BZA, when they chose to increase their student population to 600 and expand its footprint with the building of a gymnasium, but not before having demonstrated it can manage the impacts on the community at the 310-student level.

We have attempted to narrow the gap on the proposed Conditions, and have reached agreement on some, have minor disagreements on others, **and significant differences on a few, but especially the need for LAMB to come back to the BZA to seek approval for the 600-student population level; that's a must.**

You are correct in stating that there is a trust issue, but it is not against LAMB as an institution that we welcome at 310 students; it is against LAMB with a combined three campuses at a maximum of 600 students, along with an interim Kingsbury operation of 175 students, plus both faculty and staff. In addition, as to the trust issue, Applicant LAMB claims Kingsbury bears no responsibility for any conditions negotiated by LAMB and will not be held accountable to requirements under R-16, thus making Kingsbury an easy scapegoat and target should LAMB be found in violation of any of its Conditions. Kingsbury can easily be blamed.

III. Availability of Financing and LAMB's Popularity with Students' Parents Do Not Override Assessing Whether an Applicant Meets the Requirements of the R-16 Zoning Overlay Regulations.

Building Hope and LAMB are parties in this application. The opening statement of Applicant's Exhibit #11 reads in part, *This is the application of Building Hope and the LAMB Public Charter School collectively, the Applicant(s) for a special exception for the establishment of a public charter school and co-location of a public school with another permitted existing private school at 5000 14th Street NW. The Property is included in the R-16 Zone District.*

Applicant claims to have only one option for financing – to have the BZA approve the 600-student population level at the outset. It also claims, despite the proposed landlord/tenant relationship between co-tenants Kingsbury/LAMB (with Building Hope being both their landlords), co-tenant Kingsbury cannot be legally held accountable to co-tenant LAMB and Building Hope's conditions:

- A. Financing is not a consideration in accordance with the rules associated with the special exception process applicable to the R-16 Zoning Overlay;
- B. The evaluation of the legitimacy of this claim falls outside the expertise of the BZA and cannot over-ride compliance with the Zoning Overlay regulations;
- C. CNDI-LA maintains LAMB has not clearly defined or described its financing challenges, especially during the interim period of 310-students. (Instead, it is relying on 5th party advocate and co-Applicant, Building Hope, to provide answers for LAMB. For it's part, Building Hope wants to claim sovereignty on the conditions for its co-tenant Kingsbury – as being unenforceable – feigning no responsibility, which we find to be confusing and puzzling. As proposed, there must be other options available during the interim period, allowing LAMB to move in before meeting the 600 student population level.
- D. LAMB is not currently located at the Kingsbury site and therefore suffers no detrimental financial impact regarding the use of this site if disapproved.
- E. LAMB, as evidenced by its significant outreach to actual and prospective parents, is popular at its current locations.
- F. LAMB's desire to consolidate, does not trump compliance with zoning regulations intended to protect the residential characteristic and quality of life in this community, and
- G. Considering all of the above, perhaps this is not the right location for LAMB to consolidate its campuses.

IV. ANC 4C's Position Should Not be Given Great Weight: They Neither Demonstrated Neutrality nor Compliance with Zoning Regulations Requiring that ANC Review of BZA Applications Address Standards in the Zoning Regulations.

It was mentioned during the December 20th hearing, in discussions on the LAMB / Community Committee (LCC), the position of ANC 4C02 SMD Commissioner Maria Barry as neutral; yet another reason LAMB should come back to the BZA.

While neutrality is a desirable trait for any appointed or elected official, integrity of the process and accountability rank first. As to LAMB's Application, it has been our experience that SMD 4C02 Commissioner Maria Barry (Barry) is neither neutral, nor is there any immediately-available mechanism to hold her accountable for her actions. She has clearly sided with the Applicant and in the ANC 4C review and public decision making process, which in their design favors the Applicant, she has consistently echoed LAMB's position. Evidence of ANC 4C and Barry's failures – lack of neutrality – include, but are not limited to the following:

- A. Before meeting with directly-impacted residents – identified by Applicant as being within 200ft of the facility – Barry first notified parents in the greater 16th Street Heights community and beyond, effectively dividing the community into those supporting *the popularity of LAMB* vs. those concerned with *the impacts on the directly-affected residents*. Those directly-impacted were forced to play catch-up.
- B. Before scheduling the first ANC 4C vote on LAMB's Application, Barry did not reach out or meet with directly-impacted community members, placing them at a continuing disadvantage, again forcing them to play catch-up.
- C. Without considering or evaluating (1) the failure of the combined applications of Kingsbury/LAMB (#16569A and #19581 respectively) and their eventual separation, causing non-compliance with the 200ft rule; (2) Kingsbury's failure to comply with the BZA's original order (#16569), and (3) the impact of a combined Kingsbury/LAMB-operation on the community, Barry along with ANC 4C, introduced and passed a deficient, undated Letter of Support (uploaded to IZIS 09/27/17 BZA Case #16569A/Exhibit 7), leaving the directly-impacted community without direct or sufficient notice of the Kingsbury Application, as well as ANC 4C's subsequent actions.
- D. Without ever addressing the R-16 Zoning Overlay requirements or LAMB's traffic study findings, in late-September community meetings, ostensibly on the LAMB Application, Barry, now joined by Commissioner Charlotte Nugent (SMD 4C07), advocated for a broad DDOT traffic study to take place after the BZA rules on LAMB's Application, obfuscating the issue, and
- E. CNDI-LA, a party to the case, repeatedly having to advocate to Barry, to postpone or reschedule ANC 4C's vote and/or LAMB's BZA Application, in order to accommodate meetings with the community to learn more about and address LAMB's Application.

There is no evidence of neutrality where 99% of CNDI-LA members are located within 400' boundaries and CNDI-LA appears in this BZA process as an opposition party, yet Commissioner Barry appeared as a *proponent* witness at the Dec. 20th hearing (Exhibit #162) and three (3) Commissioners – Barry, Nugent and Hilley, (SMD 4C06) wrote letters of support, (Exhibits 72, 76 and 90), advocating that LAMB not return to the BZA for its 600 student approval.

It is for these and other reasons, found in our response to ANC 4C's Dec. 13th resolution, (Exhibit 157), we reiterate to the BZA to withhold granting *great weight* generally accorded any ANC representing its constituency, to protect the integrity of the process.

V. Closing

In summary, to give assurances of compliance, consistent with the Comprehensive Plan and the Rock Creek East Livability Study, which maintain and recognize the R-16 Zoning Overlay, CNDI-LA urges the BZA to approve LAMB's proposal for 310 students and 36 faculty/staff, but require LAMB returns to the BZA to increase their student population to 600 and build the gymnasium. This affords all parties an opportunity to test LAMB's proposed Conditions of Approval.

To not have LAMB return to the BZA and prove they are operating within the Plan and the Study – R-16 guidelines – and in compliance with the conditions set by this Board, is to negate the purposes of the Overlay and to approve the continued expansion of non-residential uses in this single family residential community, along with the significant deterioration of residents' quality of life.

Sincerely,



R. A. Udell

Secretary, Committee of Neighborhoods Impacted by LAMB Application #17-0001